

## **Exhibit 12**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

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THE CITY OF HUNTINGTON,

Plaintiff,

v.

CIVIL ACTION NO 3:17-01362

AMERISOURCEBERGEN DRUG

CORPORATION, et al,

Defendants.

CABELL COUNTY COMMISSION,

Plaintiff,

vs.

AMERISOURCEBERGEN DRUG

CORPORATION, et al,

Defendants.

\*\*\*\*\*

Videotaped and videoconference deposition of  
DAVID POTTERS, taken by the Defendants pursuant to the  
West Virginia Federal Rules of Civil Procedure, in the  
above-entitled action, pursuant to notice, before Twyla  
Donathan, Registered Professional Reporter and Notary  
Public, at the Law Offices of Jackson Kelly, 500 Lee  
Street, East, Suite 1600, Charleston, West Virginia, on  
the 14th day of August, 2020.

<p style="text-align: right;">Page 34</p> <p>1 assume anyone who is distributing controlled 2 substances in West Virginia -- into West Virginia. 3 A Okay. There were roughly a thousand 4 wholesalers distributing into West Virginia with one 5 major location located in West Virginia, in Wheeling, 6 with Cardinal Health. And if they had been sending 7 them off from 2007 to 2012, it would have been -- if 8 it was the same volume as we received from 2012 9 forward, it would have been a large volume. 10 But I can only speculate as to what the 11 volume would be before, because the lawsuit obviously 12 triggered a change in behavior with regard to sending 13 them to us, and I don't know what they were sending 14 to DEA, if anything, to send a copy to us. Because 15 we got the same thing DEA would get, is my 16 understanding. 17 Q Again, did you have any data that you 18 collected or pulled out of the suspicious order 19 reports you did receive? 20 A Just to look at them and see that they were 21 all small volumes. There were no large numbers to 22 jump out at you and say we need to go look at this. 23 Q As of July of 2016, had the board taken any 24 action in connection with suspicious order reports</p>	<p style="text-align: right;">Page 36</p> <p>1 file any complaint with the Board of Pharmacy 2 concerning a failure by a wholesale distributor to 3 file suspicious order reports? 4 A No such complaint was ever filed with the 5 Board of Pharmacy from any entity, including those 6 named during my tenure. 7 Q Can the Board of Pharmacy initiate a 8 complaint? 9 A Yes. 10 Q And did the Board of Pharmacy ever initiate 11 a complaint with respect to the Attorney General's 12 lawsuit that the wholesale drug distributors had 13 failed to file or submit suspicious order reports? 14 A No. 15 Q During your tenure at the Board of 16 Pharmacy, did the board ever do anything to try to 17 confirm that a registrant had actually designed and 18 was operating a system to disclose the suspicious 19 orders? 20 A Yes, but I would have to clarify that 21 answer. The wholesale drug distributors that were 22 distributing controlled substances had to get a 23 West Virginia Controlled Substances Handling Permit 24 and had to have, in order to get that, a DEA</p>
<p style="text-align: right;">Page 35</p> <p>1 that they had received? 2 A We were working on making sure that the 3 reporting was received, that we were filing it, 4 logging it, filing it, and sharing it with the 5 Attorney General's Office. But based upon our prior 6 inquiry into the first few we got, and then the later 7 ones all being similar, we had already determined 8 that they were not useful for an investigative tool 9 for us without ARCOS data, et cetera. So if that 10 answers your question. 11 Q Yeah. Did you have the resources in July 12 of 2016 to deal with the suspicious order reports you 13 were receiving? 14 A If we had to investigate every one of them, 15 no. Even just calling every one of them, no. But it 16 wasn't necessary to call on every one of them either 17 because, again, based upon just calling on the first 18 few and then all the rest being similar, very small 19 numbers, no large numbers to jump out at you, then we 20 handled them as described. 21 Q Did the Attorney General, the DHHR, or -- 22 it's the Department of Military Affairs and Public 23 Safety, prior to the lawsuit that they did bring in 24 the 2012 time frame against some distributors, ever</p>	<p style="text-align: right;">Page 37</p> <p>1 Controlled Substances Registration. In order to get 2 that DEA Controlled Substances Registration, they 3 would have to have the system that was required by 4 the DEA rule. 5 Our rule, as I researched it, is pretty 6 much an exact copy of the DEA rule displaced in the 7 West Virginia law, when you're looking at Exhibits 1 8 and 2, subsection 4.4. 9 So given that the DEA required them to have 10 a system in place, and they had a DEA registration, 11 we relied upon that fact to say that, yes, they do 12 comply, and issued them the West Virginia Controlled 13 Substances Handling Permit. We did not actually go 14 out and inspect the wholesalers with regard to out of 15 state to see if they had a system. 16 With regard to the one in-state wholesaler 17 location in Wheeling with Cardinal Health, we did 18 inspect that generally for its safety, cleanliness, 19 et cetera, but I don't know that we ever looked to 20 see if they had this type of program in place because 21 that would have been at corporate. 22 Q And I guess I'll go back, but you've stated 23 that by virtue of having the DEA -- permit? 24 A Yeah.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q -- you would have relied upon that to  2 conclude that the wholesaler distributor had a  3 program in place; is that correct?  4 A Yes.  5 Q Okay. So the Board of Pharmacy did not do  6 anything independently to confirm that a distributor  7 actually had designed a system that would comply with  8 the regulation?  9 A Correct.  10 Q So is it fair to say that the Board of  11 Pharmacy ceded to the DEA responsibility to the  12 extent there is responsibility to review and approve  13 a system that that distributor put in place to  14 identify and report suspicious orders?  15 A Yes, we relied upon the DEA.  16 Q While you were at the Board of Pharmacy,  17 would it have been difficult for you to monitor the  18 anti-diversion programs of various distributors?  19 A I believe, yes, it would have been very  20 difficult, because we did not have the type of staff  21 that would know how they compute those algorithms.  22 They're very complex systems, as I understand it from  23 discussions with one particular person named Michael  24 Mone, who used to be at Cardinal Health. They're</p>	<p style="text-align: right;">Page 40</p> <p>1 what is meant by a normal pattern or unusual  2 frequency of an order?  3 A Not to my personal knowledge, nothing like  4 that ever came to my attention.  5 Q With regard to those terms, David, "unusual  6 size, orders of unusual size," have you given any  7 thought during your time at the Board of Pharmacy  8 about what number an order might need to be to be of  9 an unusual size, or how to establish a parameter of  10 what might be unusual?  11 A That would be beyond my capability and my  12 knowledge. That would depend on the contracts --  13 private contracts that the wholesaler had with the  14 pharmacy, what their volume was, what they allowed on  15 an annual or monthly -- semi-monthly, annual basis,  16 however their contract worked, as to what would be  17 unusual or out of the ordinary to them. It was left  18 to the wholesaler to determine, as I understand the  19 DEA's law, which we had in our law.  20 Q Are you aware of any definition of these  21 terms "unusual size"?  22 A I don't know if anything has changed since  23 I left the Board of Pharmacy, but I'm not aware of  24 any during my tenure or since.</p>
<p style="text-align: right;">Page 39</p> <p>1 very complex systems that have algorithms built in to  2 look at the numbers in a way that I and my staff  3 would not have understood it. And so we relied upon  4 the DEA, as stated, to make sure that those systems  5 were appropriate and in place.  6 Q During your tenure, the Board of Pharmacy  7 never asked for, looked at, or levied any requirement  8 or suggested anything that should be contained  9 specifically in a distributor's system to disclose or  10 detect suspicious orders; is that right?  11 A Other than what's stated in 4.4, that is a  12 carbon copy of the DEA regulation, no, we did not  13 have anything else.  14 Q Along those lines, the Board of Pharmacy  15 did not do anything to offer a definition or pour  16 content into the language that we see in the  17 regulation, including what is meant by unusual size  18 or what is meant by deviating substantially from a  19 normal pattern; is that right?  20 A No, we did not define those terms.  21 Q Are you aware of anyone at the Board of  22 Pharmacy who was asked to and did offer content or  23 description of what is meant by "unusual size,"  24 deviating substantially from a normal pattern, or</p>	<p style="text-align: right;">Page 41</p> <p>1 Q So let me ask you a specific example. You  2 were asked this in your prior deposition. If there  3 was an order of 157,000 hydrocodone tablets from a  4 distributor in one month to a pharmacy in a town of  5 3,000 people, would you view that as an unusual size  6 order?  7 A It would all depend.  8 MR. FITZSIMMONS: Gretchen, would you  9 give me the citation of the deposition that you  10 allege that he testified to?  11 MS. CALLAS: It's page 282. And that  12 was the --  13 MR. FITZSIMMONS: First day?  14 MS. CALLAS: Yes, sir. That was the  15 question.  16 THE DEPONENT: And whatever my answer  17 was on that day would be the truth as I knew it.  18 I've been away from this for quite some time. I  19 don't put thought into that job anymore. I have  20 other duties.  21 So I believe my answer at that time  22 would be consistent with the fact that the Board of  23 Pharmacy would not have known the incoming numbers  24 prior to that, would not know the patient population</p>